IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2137 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURYAKANT SHANTILAL PATEL - Petitioner(s)

Versus

RATHOD BUDHABHAI SHANKERBHAI & 5 - Respondent(s)

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Appearance :

UNSERVED-EXPIRED (N) for Petitioner(s) : 1,MR NK MAJMUDAR for Petitioner(s) : 1.2.1,1.2.2
SERVED BY AFFIX.-(R) for Respondent(s) : 1 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2005

ORAL JUDGMENT

1. This matter is called out twice today. The learned advocate appearing on behalf of the petitioners is absent. Since the matter is of the

year 1987, this Court has no other alternative but to decide and dispose of the present Special Civil Application on merits ex-parte in absence of presence of the learned advocate for the petitioners.

2. In this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 04th March 1986 passed in Revision Application No.TEN.BA.269/84 in dismissing the same and confirming the order passed by the Deputy Collector, Vadodara, dtd. 11th February, 1984 passed in Tenancy appeal No. 26 of 1982 as well as the order passed by the Mamlatdar & ALT, Vadodara dtd. 12th January, 1982 passed in Tenancy case No. 4885 of 1981.

3. It appear from the record that the dispute is with regard to the land admeasuring Acres 2 - 7 Gunthas of Survey No. 380 of village Tarsali, Taluka-Dist Vadodara. The original petitioners Patel Shantilal Nagjibhai claimed to be the tenant in respect of the said land and he submitted application

to the Mamalatdar & ALT, Vadodara for declaring him as the tenant under the provisions of Bombay Tenancy Act, more particularly under section 32 (G) of the Act and the Mamalatdar & ALT, Vadodara on appreciation of evidence and giving opportunity to all the concerned parties held that the only petitioner has failed to establish that he was cultivating the land and/or he was the tenant of the land in question as on 1st April 1957 and accordingly dismiss the application under Section 32 (G) of the Act by order dtd. 12th January 1982. Being aggrieved and dissatisfied with the order passed by the Mamalatdar & ALT Vadodara dtd. 12th January 1982 passed in Tenancy appeal No. 4885 of 1981 in dismissing the application submitted by the petitioner under Section 32(G) of the Bombay Tenancy Act, the original petitioner preferred an appeal before the Deputy Collector, Vadodara under the Bombay Tenancy Act being tenancy appeal No. 26 of 1982 and the Deputy Coleector Vadodara by its order dtd. 11th February 1984 dismissed the said appeal confirming the order passed by the Mamlatdar and ALT dtd. 12th January 1982 passed in tenancy case No. 4885

of 1981. Being aggrieved and dissatisfied with the order passed by the Deputy Collector Vadodar dtd. 11th February 1984 passed tenancy appeal No. 26 of 1982 in dismissing the same and confirming the order passed by the Mamalatdar & ALT in dismissing the application of the original petitioner for declaring him as tenant under section 32(G) of the act, the original petitioners preferred revision application before the Gujarat Revenue Tribunal being revision application No. TEN.BA. 269 of 1984. The Gujarat Revenue Tribunal by its judgment and order dtd. 4th March 1986 dismissed the said revision application and confirmed the orders passed by both the authorities is below. Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dtd. 4th March 1986 passed in revision application No. TEN.BA. 269 of 1984, the original petitioner has preferred the present special civil application under Article 227 of the Constitution of India.

4. From the pleadings, it appears that it is the case on behalf of the original petitioner that all the authorities below have materially erred in

rejecting application for declaring him as tenant under section 32(G) of the Bombay Tenancy Act and that, all three authorities below have materially erred in holding that the petitioner has failed to establish that he was cultivating the land in question and/or in possession of the land in question as on 1st April 1957.

5. This Court has gone through the judgment and order passed by the Gujarat Revenue Tribunal impugned in the preset special Civil Application as well as the order passed by the Mamlatdar & ALT Vadodara and the Deputy Collector Vadodara. It appears that on appreciation of evidence, all three authorities below have concurrently found that the petitioner was not in possession of the land in question for which the tenancy is claimed as on 1st April 1957 and therefore when the petitioner was not in possession of the land in question as on 1st April 1957, the petitioner was not required to be declared as tenant under section 32(G) of the Bombay Tenancy Act. This is concurrent finding of fact given by all three authorities below and this Court is not required to re-appreciate the

evidence in exercise of powers under Article 227 of the Constitution of India. When the petitioner has failed to establish by producing the evidence that he was in possession of the land in question as on 1st April 1957, application submitted by him for declaring him as tenant under section 32(G) has rightly been rejected. There is no jurisdictional error, much less an error of law, committed by all three authorities below, more particularly, Gujarat Revenue Tribunal which requires any interference at the hands of this Court in exercise of powers under Article 227 of the Constitution of India .

6. For the reasons stated above, the petition fails and the same is dismissed accordingly. Rule is discharged, however there will be no order as to costs. Ad interim relief, if any, stands vacated forthwith.

(M.R.SHAH, J.)

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